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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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07/16/2003

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EXAMINER

POLLACK, MELVIN H

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/451,802

Applicant(s)

SUNDAR, MURALI

Examiner

Melvin H Pollack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *see attached office action*.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant has added new limitations to the scope of the claims. Specifically, the applicant has fixed the purpose of the invention such that "the preferred state comprises at least one of hardware or software configuration of the networked computers."
3. Applicant argues that Adams does not expressly disclose "specifying preferred hardware and software configuration but merely addresses distributed data management." Examiner agrees that Adams expresses a more generalized system (Page 7, 2nd to last paragraph). However, a system that delivers control over various system activities, the examiner notes that the addition of analogous art will not destroy the reference. Further, the applicant states that "Adams teaches for example specifying a preferred state of data file sizes in systems (Page 7, 3rd to last paragraph)." The examiner interprets this as a change to the computer node itself, thus providing the motivation to combine with another system that performs more specific computer control methods using agents.
4. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all art cited fills this definition of analogous art.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 7, 8, 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams (5,963,944) in view of Meyer et al. (6,289,378).

7. For claim 1, Adams teaches a method (see abstract) of managing the state of networked computers (col. 1, lines 9-11), comprising:

- a. Specifying a preferred state (col. 9, lines 46-50);
- b. Defining selected networked computers to be maintained in the preferred state (col. 5, lines 3-15);
- c. Monitoring the selected networked computers for deviation from the preferred state (col. 2, lines 30-40); and
- d. Bringing the selected networked computers that deviate from the preferred state to the preferred state (col. 3, line 65 – col. 4, line 7) via a mobile software agent (col. 1, lines 49-51) that travels autonomously between the selected networked computers (col. 4, lines 16-32).

8. As shown above, Adams teaches a generic set of preferred states, including at least one control of the remote nodes. Adams does not expressly disclose that the preferred state comprises at least one of hardware or software configuration of the networked computers. Meyer teaches a method (see abstract) for a remote (col. 1, lines 29-31) management system (col. 1, lines 6-7) that is capable of managing hardware and

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software configurations (col. 1, lines 35-40) using remote agents (col. 1, lines 40-45).

This includes monitoring of the system (col. 1, lines 50-52) and control of the system (col. 1, lines 53-55). Further, a change to a computer implies that a preferred state was at one point specified. For more information, the applicant is directed to col. 5, line 40 – col. 6, lines 19.

9. As shown above, one of the system changes that Adams developed was to change the file size of a remote node. This activity would require changes to the hardware and software communication in order to react to the new file size. Therefore, at the time the invention was made, one of ordinary skill in the art would have combined the two inventions in order to define several potential uses for the generic Adams system.

10. Claims 2 and 8 are drawn to many of the features in claim 1, and are also rejected. The examiner suggests cancellation of these claims.

11. For claim 7, Adams teaches that a mobile software agent performs the monitoring (Fig. 2, #126).

12. Claim 16 is a machine-readable medium with instructions stored thereon, the instructions operable when executed to implement the method drawn in claim 1. Claims 17-19 are similar, but do not have all the limitations. The prior art teaches that a software implementation is functionally equivalent to the underlying method. If claim 1 is rejected, then claims 16-19 are also rejected for the reasons above.

13. Examiner takes Official Notice (see MPEP § 2144.03) that “program instructions are stored on a medium and operable when executed” in a computer networking environment was well known in the art at the time the invention was made.

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14. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03. However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

15. Claim 20 is drawn to a computerized network computer management system comprising a hardware implementation of the method drawn in claim 1. The prior art teaches that a hardware implementation is functionally equivalent to a software implementation. Therefore, if claim 1 is rejected, then claim 20 is also rejected for the reasons above.

16. Claim 21 is drawn to a method with many of the same limitations as claim 1. If claim 1 is rejected, then claim 21 is also rejected for the reasons above.

17. Claims 3-6, 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Adams and Meyer* as applied to claims 1, 2, 7, 8 above, and further in view of *Walsh* (6,233,601).

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18. Walsh teaches (see abstract) a mobile software agent (Fig. 3) that travels autonomously (Fig. 5) between the selected networked computers (Fig. 6).

19. Adams teaches a mobile agent, as shown above, but does not adequately disclose the technique of agent movement. For claims 3 and 4, Walsh teaches that the agent travels to the computers on a generated list of networked computers to be maintained in the preferred state (Fig. 6, #28). As for claims 5 and 6, Walsh teaches that selecting the computers involves defining a network space of computers, wherein the agent autonomously travels to the computers within this space (Fig. 6). At the time the invention was made, one of ordinary skill in the art would have used the Walsh method of agent travel to determine the Adams method of travel and to provide efficient mobility of code (col. 2, lines 16-17).

20. For claim 10, Walsh teaches that the mobile agent travels by transferring itself from one computer to the next, and erasing itself from the present computer after it has successfully transferred itself (col. 4, lines 47-57). Adams teaches the need for a mobile agent to travel efficiently (col. 4, lines 16-32), but does not expressly disclose that the agent is deleted. At the time the invention was made, one of ordinary skill in the art would have used the Walsh travel method to increase Adams' mobile agent efficiency.

21. For claims 11-15, Walsh teaches that the agent can decide to travel to computers not originally on the itinerary, and maintains a trip report that is sent to the host both periodically and upon return (col. 2, lines 47 – 58). Walsh also teaches that the selected network computers have a mobile software agent host program thereon to facilitate mobile software agent travel and execution (Fig. 5, 7). Adams does not expressly disclose a travel log, but does teach that an agent may change its itinerary (col. 4, lines

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16-32) and belongs to an agent host program (Fig. 1, 110). At the time the invention was made, one of ordinary skill in the art would have used a Walsh agent system to more accurately control and track an Adams agent.

22. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams and Walsh as applied to claims 1, 2, 7, 8 above, and further in view of Johnson et al (5,987,135).

23. Johnson teaches many of the limitations in claim 1, as shown in prior office actions. As for claim 9, Johnson teaches that the mobile software agent that brings the selected networked computers that deviate from the preferred state to the preferred state also performs the monitoring the selected networked computers for deviation from the preferred state by first monitoring each selected networked computer it travels to for deviation from the preferred state and subsequently bringing the computer to the preferred state if it deviates from the preferred state (It was shown in prior office actions that an agent can have a monitor capability and another agent can have a correction capability. But the above says that an agent can “perform any or all of the following functions” in col. 5, line 1. That is, the same agent can perform both monitor and correction functions.).

24. Adams teaches many of the above details, but does not fully disclose all of the monitoring techniques. At the time the invention was made, one of ordinary skill in the art would have used Johnson’s monitoring agents to learn how to implement the monitoring agents of Adams.

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Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

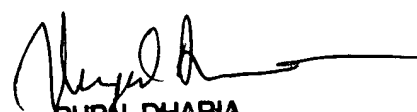
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H Pollack whose telephone number is (703) 305-4641. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703)305-4003. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800.

MHP
July 10, 2003


RUPAL DHARIA
PRIMARY EXAMINER